

1  
2  
3  
4  
5  
6  
7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10 DEX MEDIA WEST, INC., et al.

CASE NO. C10-1857

11                   Plaintiffs,

ORDER

12                   v.

13 CITY OF SEATTLE, et al.,

14                   Defendant.

15                   Before the court is Plaintiffs Dex Media West, Inc., SuperMedia LLC, and Yellow  
16 Pages Integrated Media Association d/b/a Yellow Pages Association's motion for a  
17 preliminary injunction pending appeal (Dkt. # 69). On May 11, 2011, Plaintiffs filed a  
18 notice of appeal to the United States Court of Appeals for the Ninth Circuit (Dkt. # 68)  
19 from this court's order of May 8, 2011 denying Plaintiffs' motion for a preliminary  
20 injunction (Dkt. # 66). Plaintiffs now move to enjoin Defendants City of Seattle and Ray  
21 Hoffman, Director of Seattle Public Utilities (collectively "the City"), from enforcing  
22

1 Seattle Ordinance 123427 pending their appeal. The City has filed an opposition to  
 2 Plaintiffs' motion. (Dkt. ## 70, 71.)<sup>1</sup> The court has considered the parties' pleadings and  
 3 the declarations on file, and being fully apprised, the court DENIES Plaintiffs' motion.

4 Once a notice of appeal is filed, the district court is ordinarily divested of  
 5 jurisdiction over the matters being appealed. *See Natural Res. Def. Council, Inc. v. Sw.  
 6 Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). However, the principle of exclusive  
 7 appellate jurisdiction is not absolute. *Id.* The trial court retains inherent power during  
 8 the pendency of an appeal to act to preserve the status quo to ensure the effectiveness of  
 9 the eventual judgment. *See id.*; *Tribal Village of Akutan v. Hodel*, 859 F.2d 662, 663 (9th  
 10 Cir. 1988). Federal Rule of Civil Procedure 62(c) codifies this exception to the general  
 11 rule of exclusive appellate jurisdiction by stating in part that “[w]hile an appeal is  
 12 pending from an interlocutory order or final judgment that . . . denies an injunction, the  
 13 [district] court may suspend, modify, restore, or grant an injunction on terms for bond or  
 14 other terms that secure the opposing party's rights.” Fed. R. Civ. P. 62(c). In addition,  
 15 pursuant to Federal Rule of Appellate Procedure 8(a)(1), to obtain an injunction from the  
 16 Ninth Circuit while an appeal is pending, “[a] party must ordinarily move first in the  
 17 district court.” Fed. R. App. P. 8(a)(1)(C).

18 In deciding whether to grant an injunction pending appeal, courts apply a standard  
 19 similar to the standard for considering a motion for a preliminary injunction. *Akutan*, 859

---

20 \_\_\_\_\_  
 21 <sup>1</sup> No party has requested oral argument, and the court deems oral argument to be  
 22 unnecessary for its resolution of this motion.

1 F.2d at 663; *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983); *Humane Soc. of*  
2 *United States v. Guterrez*, 558 F.3d 896, 896 (9th Cir. 2009). In 1987, the Supreme  
3 Court stated that “[u]nder both [Federal Rule of Civil Procedure 62(c) and Federal Rule  
4 of Appellate Procedure 8(a)], . . . the factors regulating the issuance of a stay are  
5 generally the same: (1) whether the stay applicant has made a strong showing that he is  
6 likely to succeed on the merits; (2) whether the applicant will be irreparably injured  
7 absent a stay; (3) whether issuance of the stay will substantially injure the other parties  
8 interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunkill*,  
9 481 U.S. 770, 776 (1987) (citations omitted). Recently, the Supreme Court stated  
10 similarly that in order to obtain a preliminary injunction, the moving party “must  
11 establish that he is likely to succeed on the merits, that he is likely to suffer irreparable  
12 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and  
13 that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council*, 555 U.S.  
14 7, 129 S.Ct. 365, 374 (2008); *Humane Soc.*, 558 F.3d at 896. In addition, the Ninth  
15 Circuit has held that “serious questions going to the merits, and a balance of hardships  
16 that tips sharply toward the plaintiff can support issuance of a preliminary injunction, so  
17 long as the plaintiff also shows that there is a likelihood of irreparable injury and that the  
18 injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d  
19 1127, 1135 (9th Cir. 2011).

20 Plaintiffs’ present motion does not state any new reason for the issuance of an  
21 injunction pending appeal that Plaintiffs did not already assert in their prior motion for a  
22 preliminary injunction. (*Compare* Mot. Prelim. Inj. (Dkt. # 41) *with* Mot. Prelim. Inj.

1 Pend. App. (Dkt. # 69).) For reasons stated in the court's previous order denying  
2 Plaintiffs' motion for a preliminary injunction (Dkt. # 66), Plaintiffs have failed to  
3 establish that they are likely to suffer irreparable harm in the absence of an injunction or  
4 that an injunction would be in the public interest. Thus, under any of the standards  
5 articulated by either the Supreme Court in *Hilton* or *Winter*, or by the Ninth Circuit in  
6 *Cottrell*, Plaintiffs have failed to establish that they are entitled to an injunction pending  
7 appeal. Accordingly, the court DENIES Plaintiffs' motion. (Dkt. # 69.)

8 Dated this 16th day of May, 2011.

9  
10   
11

12 JAMES L. ROBART  
United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22